Supreme Court, U.S.
FILED
MAY 12 1999
OFFICE OF THE CLERK

(2)

No. 98-1356

IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA, PETITIONER

*v.*

LEVI STRAUSS & COMPANY

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*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT*

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**A BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI**

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Paul G. Giguere
Counsel of Record
Ronald W. Gerdes
Gilbert Lee Sandler
Edward M. Joffe
Attorneys
Sandler, Travis & Rosenberg, P.A.
Suite 400
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202)638-2230

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## CORPORATE DISCLOSURE

Counsel certifies that the full name of the party represented by our firm is Levi Strauss & Company. Neither our client, nor any of its subsidiaries or affiliates, have issued shares to the public. There are no nonwholly owned subsidiaries.

## STATEMENT

Pursuant to the request of this Court on April 12, 1999, Levi Strauss & Company (Levi) hereby responds to the petition for a *writ of certiorari* filed by the United States in this matter. Simply stated, respondent believes that the judgment in this matter should be vacated and the case remanded for further proceedings consistent with the opinion of this Court in *United States v. Haggar Apparel Company*, _____U.S.____ (1999).

The initial question presented by the petition is "whether regulations issued by the Treasury Department under the Tariff Act are entitled to deference in determining the proper tariff classification of imported goods." As the government correctly notes, Pet. at 7, this is identical to the question presented in the *Haggar* case, and both cases present that question in the context of 19 C.F.R. 10.16(c), that interprets the duty allowance under subheading 9802.00.80, Harmonized Tariff Schedules of the United States. This question was directly resolved by this Court's decision in *Haggar*, which held "the regulation in question is subject to the analysis required by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and that if it is a reasonable interpretation and implementation of an ambiguous statutory provision, it must be given judicial deference." *Id.* at 1. Having just decided this question, Levi sees no reason for the Court to revisit that issue here.

The second question presented is whether "19 C.F.R. 10.16(c) reasonably interprets the statutory phrase 'operations incidental to the assembly process' in Subheading 9802.00.80 of the Harmonized Tariff Schedules

of the United States." This question was also presented in the *Haggar* matter, and this Court found that there were "substantial arguments challenging the regulation's interpretation of the statutory language as well as the application of the regulation to the particular process and goods at issue..." *Id.* at 13. As to these arguments, this Court concluded that "these and similar arguments, which raise the difficult question of how the regulation at issue fares under the *Chevron* framework, are best addressed in the first instance to the Court of Appeals for the Federal Circuit or to the Court of International Trade." *Id.* at 14. The instant matter raises the identical question of the regulation's interpretation of the statutory language and similar arguments as to the application of the regulation to the particular process and goods at issue. Having just concluded that such issues are best resolved in the first instance by the lower court, Levi sees no reason for this Court to revisit those issues here.

Finally, we would note that the government, itself, requests that the instant matter be "disposed of as appropriate" following this Court's decision in *Haggar*. Pet. at 8. This request supports the view that the instant matter be remanded consistent with the decision in the *Haggar*.

For the reasons outlined above, Levi believes the judgment in this matter should be vacated and the case remanded for further proceedings consistent with this Court's opinion in United States v. Haggar Apparel Company, _____U.S. _____ (1999).

Respectively Submitted,

Paul G. Giguere, Counsel of Record
Ronald W. Gerdes
Gilbert Lee Sandler
Edward M. Joffe
Attorneys
Sandler, Travis & Rosenberg, P.A.
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202)638-2230